

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 62 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
COMMISSIONER OF INCOME-TAX

Versus

PETROFILS CO.OP LTD

-----  
Appearance:

MR MANISH R BHATT for Petitioner  
SERVED BY RPAD - (N) for Respondent No. 1

-----  
CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 06/11/98

ORAL JUDGEMENT

1. At the instance of Commissioner of Income-tax, Baroda, the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' has referred the following question of law for the opinion of this Court which arose out of its order in Income Tax Appeal No. 1239/Ahd./82 for the assessment

year 1978-79:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the interest earned on the deposits was not liable to be assessed as income under the Income Tax Act, 1961?"

2. As per the facts found by the Tribunal, during the assessment year in question assessee has not commenced its business, but was in the process of setting up of business of manufacturing yarn. The production had not commenced. The assessee had taken a loan for establishing and manufacturing apparatus. As the assessee could not utilise all the funds, he kept the same in short term deposits and earned interest amounting to Rs.81270/- during the year. The Income Tax Officer taxed the same under the head income from other sources and did not allow the assessee's claim to set off against the interest liability of the assessee, thereby reducing the said expenditure for the purpose of capitalisation. This finding was reversed by Commissioner of Income Tax and in appeal the said finding was affirmed by the Tribunal, allowing the deduction of interest paid on money borrowed thereby reducing the interest liability of the assessee for being capitalised.

3. The question arising in this case is similar to one that arose in the case of TUTICORIN ALKALI CHEMICALS AND FERTILIZERS LTD. v. COMMISSIONER OF INCOME-TAX (1997) 227 ITR 172 before the Supreme Court. The Supreme Court held:

"The expenditure incurred by the assessee for the purpose of setting up its business could not be allowed as deduction, nor could it be adjusted against any other income under any other head. Similarly any income from a non business source could not be set off against the liability to pay interest on funds borrowed for the purpose of purchase of plant and machinery even before commencement of the business of the assessee"

The court also held:

"An assessee-company may have raised its capital by issue of shares or debentures or by borrowing. But when that capital or a portion of it was utilised for whatever reason, even for a short period, to earn interest, that interest must be treated as revenue receipt and will have to be

taxed accordingly."

4. Following the aforesaid decision of the Supreme Court, this Court in assessee's own case for assessment year 1977-78 in Income Tax Reference No.295 of 1983 decided on 16.4.98 had answered the like question against the Assessee and in favour of the Revenue.

5. In the aforesaid circumstances, the question referred to us in this case is also answered in the negative in favour of the Revenue and against the Assessee. This reference stands disposed off accordingly.

There shall be no orders as to costs.

(Rajesh Balia, J)

(A.R. Dave, J)